IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7254 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRESTHMULTI METAL IND.PVT.LTD

Versus

GUJ. INDUSTRIAL DEVEP. CORPN.

Appearance:

1. Special Civil Application No. 7254 of 1992

MR PM RAVAL for Petitioner No. 1

MR TM BAROT for M/S TRIVEDI & GUPTA for Respondent No. 1

MS ARCHANA RAVAL, AGP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision:23/07/2003 & 01/08/2003

ORAL JUDGEMENT

23.07.2003

1. The petitioner, who was allotted plot No.500, admeasuring 9800 sq. metres in Phase IV, GIDC, Vatva, Ahmedabad, on hire purchase basis at a price of

6,75,750/-, became defaulter in payment and, therefore, appropriate proceedings under Gujarat Industrial Development Corporation Act, 1962, were initiated. Against the said action, an appeal was preferred before the Appellate Authority, Ahmedabad, being Appeal No.13 of 1987, by the petitioner. By virtue of judgment and order dated August 20, 1990, the appeal came to be partly allowed and the appellant (petitioner) was permitted to pay an amount of Rs.11,97,724- plus the amount of interest due thereafter in 36 equal monthly instalments regularly. It was directed that during that period, respondent shall not execute the order of eviction with an embargo that, if the appellant fails to pay any of the three instalments, the respondent shall execute the order and obtain vacant possession of the plot in question. It was also directed that, if the appellant pays the 36 instalments as well as the future dues, the order of eviction challenged in the appeal would stand cancelled after the period of 36 months.

1.1 However, it appears that the petitioner failed to make the payments as per order of the Appellate Authority and, therefore, the agreement was terminated on 19th February, 1992. The possession of the plot in question was taken and was re-allotted to Indo German Tool Room Project.

2. It is alleged that the Corporation has realised the price of the said plot at about Rs.30 lakhs and still the Corporation is proceeding under the provisions of the Bombay Land Revenue Code by way of sale of petitioner's property situate at Rakhial.

3. The petitioner approached this Court with this petition under Article 226 of the Constitution of India in the year 1992, assailing the judgment and order in Appeal dated the 20th August, 1990, i.e. almost after two years. The order of the Competent Officer and Regional Manager of respondent No.1-Corporation is also challenged. The order is dated 5/6-7-1991. The order dated 16th July, 1992, issued by the Mamlatdar, Alien Recovery, Ahmedabad, and notification dated 7.9.1992 issued by the District Collector, Ahmedabad, as well as proclamation/notification dated 7.9.1992 by the District Collector, Ahmedabad, are under challenge.

4. The petitioner was, initially, protected by this Court while issuing notice by grant of ad-interim relief to the effect that the sale shall not be confirmed till 20.10.1992. That protection does not seem to have been extended thereafter.

5. This matter came to be admitted by a detailed order dated August 10, 1994.

6. Affidavit-in-reply is filed on behalf of the respondent, sworn by Regional Manager, GIDC, Ahmedabad, contending, inter alia, that the petition is not maintainable as various disputed questions of fact are involved; there is misrepresentation and suppression of facts on part of the petitioner; Article 226 of the Constitution cannot be invoked by a litigant for enforcement of terms and conditions of contract/agreement between the parties; that the petition suffers from the vice of delay and laches; and that when a reocvery certificate is issued by a Competent Authority for recovery of money, it assumes finality and powers under Article 226 cannot be invoked. It is contended further that possession of the plot was resumed by the respondent-Corporation on 22nd July, 1991 on account of failure on part of the petitioner in complying with the directions given by the Appellate Authority. An amount of Rs.12,69,107/- was due from the petitioner, for which the Recovery Certificate was issued by the Competent Authority authorising the Recovery Mamlatdar to recover that amount. It has been submitted that the petition may, therefore, be dismissed.

7. When the matter was called out today, none appeared for the petitioner. Mr. T.M. Barot appeared for M/s Trivedi & Gupta, for respondent No.1 and learned Assistant Government Pleader, Ms. Archna Raval, for respondent No.2.

01.08.2003

8. Today, when the matter is called out for further dictation of the judgment, like on the previous occasion, none appears for the petitioner.

9. Having considered the petition, the annexures and the affidavit-in-reply, this appears to be a case where, at this stage, no indulgence is required to be granted to the petitioner for the reliefs sought in the petition.

10. At the outset, it may be noted that the petition is preferred on the 12th October, 1992, to challenge the order dated August 20, 1990 (Annexure-L) and consequential orders for recovery (Annexure-Q). It is clear that the petitioner was a defaulter in making repayment of the advance obtained by it from respondent No.1-GIDC. GIDC, therefore, took appropriate appropriate

action for recovery and, ultimately, the matter was carried before the Appellate Authority, wherein it has been established that an amount of Rs.11,97,724/- was due from the petitioner to GIDC and that the amount was permitted to be paid in 36 equal monthly instalments regularly. Even thereafter also, the petitioner proved to be defaulter. As a consequence, GIDC became entitled to execute the order and obtain vacant possession of the plot in question. It appears that, that has been done and the possession of the plot has been taken. The plot has then been re-allotted to another party in the name of Indo German Tool Room Project (Annexure-I to the affidavit-in-reply). It indicates that a total amount of 14,87,545/- was due from the petitioner, out of which, an amount of Rs.2,18,438/- has been paid by the petitioner and, therefore, an amount of Rs.12,69,107/- stood outstanding, as on 29th March, 1994, and the proceedings against the petitioner for recovery of the amount due from him in which Recovery Certificate has been issued were initiated. It would, therefore, not be proper for this Court to grant any indulgence to the petitioner in exercise of powers under Article 226 of the Constitution. Even for the contentions raised regarding money received by GIDC through re-allotment, a petition cannot be entertained, as it would call for interpretation, identification and adjudication of contractual rights and obligations, on basis of several factual aspects over which there may be dispute between the parties. It would be a question whether the petitioner can have any claim over the amount realized by GIDC while re-allotment of the plot to Indo German Tool Room Project. It would also be a question as to what was the amount realized by GIDC.

11. In view of the fact that the petitioner has approached this Court with this petition under Article 226 of the Constitution of India at a belated stage and various questions touching contractual rights and obligations are sought to be asserted on basis of several disputed questions of facts, this Court is not inclined to entertain this petition and the petition deserves dismissal. The petition stands dismissed. Rule is discharged. Interim relief stands vacated. No costs.

12. It is clarified that dismissal of this petition may not be taken to mean rejection of any civil right that the petitioner may assert before appropriate forum. In such eventuality, the forum will decide the same uninfluenced by the dismissal of this petition.

[A. L. DAVE, J.]

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